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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

No. ~~1069~~ 174

ALBERT R. COSGROVE,
Petitioner,

vs.

THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY, a Corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the decision of the Supreme Court of Illinois entered on March 18, 1957, denying leave to appeal from the decision rendered by the Appellate Court of Illinois for the Fourth District upon November 5, 1956.

OPINION BELOW.

The opinion of the court below entered on November 5, 1956, in the Appellate Court of Illinois, from which, the Supreme Court of Illinois denied leave to appeal, found in 11 Ill. App. 2d 574 and 138 N. E. 2d 112 and is printed in an appendix to this petition, for the convenience of this Court.

BASIS OF JURISDICTION.

Jurisdiction is invoked under Section 1257 (3) of Title 28, United States Code.

The opinion of the Appellate Court of Illinois was filed November 5, 1956; petition for leave to appeal to the Supreme Court of Illinois was denied March 18, 1957.

Petitioner claims a right under a Statute of the United States to bring his suit for damages against the Respondent in a Court of Law, where he has elected to treat his discharge as an employee final. The Statute being Sec. 151 et seq. of Title 45 of the United States Code as construed and interpreted in the cases of Moore v. Ill. Cent. R. R. Co., 312 U. S. 630, 85 L. Ed. 1089, 61 S. Ct. 754; Slocum v. Delaware, L. & W. R. Co., 339 U. S. 239, 94 L. Ed. 795, 70 S. Ct. 557.

QUESTIONS PRESENTED.

The questions presented here for determination are important but may be stated very briefly. They are as follows:

1. Where a railroad employee has been discharged in violation of the contract of employment (entered into under and in compliance with the National Railway Labor

Act), does the rule laid down in Transcontinental & Western Air, Inc., v. Koppal, 345 U. S. 653, 97 L. Ed. 1325, 73 S. Ct. 906, still prevail? i. e., does he have to exhaust his administrative remedy if such is a condition precedent under State Law? Has that decision been modified by the later decision in Railway Employees Department, American Federation of Labor et al. v. Robert L. Hanson, holding that as to Railway Labor Contracts State Law has been superseded by Federal Law, or has it?

2. Where the State Court has in previous cases held that the discharged employee may bring his suit for damages in a Court of Law where he accepts and treats his discharge as final (Keel v. Ill. Term. R. Co., 346 Ill. App. 169, 104 N. E. 2d 659) under a Federal Statute (Title 45, U. S. Code, Sec. 151, et seq.) may that Court employ "merry-go-round" tactics to duck deciding the issue in violation of the United States Constitution, the 7th, 10th and 14th Amendments, and in violation of the Illinois Constitution, Article III and Article II, Sections 2, 5 and 19, and the United States Constitution, Article I, Section 10, and Illinois Constitution, Article II, Section 14.

3. Where it has been pleaded and put into issue as a submissible question to a jury, of mixed law and fact that the discharged employee who has a right under a Federal Statute (Title 45, U. S. Code, Sec. 151, et seq.) alleging that he exhausted his contractual remedies and thereafter exhausted his administrative remedies may such an issue based upon a Federal right be defeated or withdrawn from the jury upon an attack by a motion that has the effect of denying the discharged employee his day in Court in violation of the United States Constitution, the 7th, 10th and 14th Amendments and in violation of the Illinois Constitution, Article III and Article II, Sections 2, 5 and 19 and the United States Constitution, Article I, Section 10, and Illinois Constitution, Article II, Section 14.

In answering these questions petitioner assigns as error the action of the trial judge in sustaining defendant's motion to dismiss, the action of Appellate Court in Illinois in extending time to file the record and then withdrawing the extension and the action of the Supreme Court of Illinois in refusing leave to appeal, all of which had the effect of denying plaintiff his day in Court.

CONSTITUTIONAL PROVISIONS.

The constitutional provisions involved are several in number and our text is set forth in the appendix hereto. They are the following:

United States Constitution, Amendment XIV;
United States Constitution, Amendment X;
United States Constitution, Amendment VII;
Illinois Constitution, Article III;
Illinois Constitution, Article II, Sections 2, 5 and 19;
United States Constitution, Article I, Section 10;
Illinois Constitution, Article II, Section 14.

STATEMENT OF THE CASE.

References in parenthesis are to the page numbers in the printed record supplied by petitioner.

Forty copies of the printed record that have been furnished with this petition present all things deemed necessary for a consideration of the questions presented as set forth in this petition. The record as printed for the use of the last court below with the addition thereto of the proceedings in that court is furnished in compliance with Rule 26 (1). The decision of the Circuit Court is printed at page 18 and the decision of the Railway Adjustment Board is printed at page 17 of the record.

The instant case is the third action by this petitioner. The instant case was started in the Circuit Court of Madi-

son County, a part of the third judicial circuit of Illinois. The first was before the Railroad Adjustment Board and the second was before the U. S. District Court for the Eastern District of Illinois.

There are two federal questions involved. One concerns a right of action under federal statute and the other the right of hearing under the federal constitution. Both were raised in the Circuit Court of Illinois.

Plaintiff was born March 1, 1898. In 1923 he entered the employment of defendant at Madison, Illinois, as a machinist helper, at which he was employed until March 8, 1929. On that date he entered into another contract of employment with defendant wherein he agreed to work as a car inspector. There was an agreement between defendant and the union craft to which plaintiff belonged. That union, Brotherhood of Railway Carmen of America, had entered into a contract which was in force at the time of plaintiff's wrongful discharge. The contract like most others of the same general type provided for: Seniority, grievance procedures, the right to a stenographic report of hearings, appeals procedures, promotion from helper to mechanic status, rates of pay, definition of a car inspector, etc.

To the complaint filed by plaintiff he attached several photo-copies of passes issued to him by defendant on an annual basis (p. 11).

In the year 1940 when railroad business began increasing due to the war in Europe, defendant began hiring more employees. The local foreman of mechanics at Madison, Illinois, began hiring relatives and friends from his childhood hometown of Murphysboro, Illinois. Realizing these would not be able to hold a regular position in normal times, that foreman began looking for ways to force the eldest employees into retirement and to force other em-

ployees into outside positions. Thus the foreman hoped to create jobs which his friends and relatives could retain when things returned again to normal. One of those the foreman took after was plaintiff. In August, 1941, the foreman began to bring coercion and duress upon plaintiff to sign a statement which would fix plaintiff's status as that of a car inspector helper as of August, 1941.

The coercion and duress increased in its intensity until it amounted to hostility, humiliation and embarrassment. Finally on June 11, 1949, the foreman told plaintiff in the presence of witnesses that it was either sign his mechanic status and seniority away and take that of a helper or he would take him out of service and the following day would be his last.

Plaintiff worked on June 12th but when he reported for work June 13th, 1949, the foreman of defendant had another man called out and who came to work the plaintiff's job. Plaintiff was given the ultimate of signing his status away and becoming a helper or go home. Plaintiff refused to sign and the foreman of defendant refused to let him work on his regular position. There was nothing for plaintiff to do but go home, as he was then and there taken out of service by defendant.

Plaintiff followed up the grievance procedure in the contract of his craft and the appeal procedure therein to the very highest Chief Operating Officer of defendant. (p. 11). To him everyone had a deaf ear. His union is weak and dilatory and omitted to respond to many requests to arbitrate his case or prosecute it to the Railroad Adjustment Board.

Plaintiff filed a complaint and request for arbitration with the Railroad Adjustment Board seeking reinstatement. The defendant filed a motion claiming that plaintiff had not exhausted his administrative (sic-contractual)

remedies which he was right then attempting to do. It being well known to This Honorable Court that the Railroad Adjustment Board has never looked with favor upon the individual employee prosecuting his case before that body without it being brought there and prosecuted by one of the craft unions, gave plaintiff the brush off. There was no evidence taken in support of or in opposition to that motion, and it was sustained without hearing argument (p. 17).

Plaintiff then went into U. S. District Court for the Eastern District of Illinois. Plaintiff's attorney at that time mistook jurisdiction of that court. Plaintiff brought his case under the diversity theory and it turned out that defendant was a multi-state corporation, one of the states of its incorporation being Illinois and plaintiff being a citizen of Illinois. The most fatal defect, however, was in the relief sought,—plaintiff was still seeking reinstatement. Of course, the District Judge had to dismiss.

Plaintiff then sought out his present counsel who filed the instant suit in the third judicial circuit of Illinois, of which the Circuit Court of Madison County is a part. The defendant wanted more detail and moved to dismiss the complaint or to make it more definite and certain. Leave was granted to file an amended complaint (p. 2). In this suit by both the original complaint and the amended complaint plaintiff seeks damages for wrongful discharge. He spells out how he was damaged.

Plaintiff in his suit here accepts his discharge as final.

In the Court of first instance no evidence was heard. Defendant filed a motion to dismiss the amended complaint on the ground that plaintiff had not exhausted his administrative remedy (p. 15). Plaintiff alleged he did exhaust all the remedies available to him under the contract (p. 11). It thus became an issue of mixed law and fact on

that feature of the case which plaintiff says is to be submitted to a jury under proper instructions.

It was in the arguments and briefs opposing the defendant's motion assigning error in the Circuit Court of Madison County, Illinois, that the federal questions were raised, i. e., the right under federal statute to bring the suit and the deprivation of federal constitutional rights if not allowed to maintain the suit. The defendant's motion to dismiss was sustained (p. 18). The federal statute was pleaded in plaintiff's complaint and amended complaint. The federal rights were spelled out again as assignments of error by their violation in the plaintiff's briefs to the Appellate Court of Illinois for the Fourth District. That Court ducked the issues. At first it granted an extension based upon the death of a judge in the third judicial circuit and the death of Mr. Cunningham, a long time deputy clerk to Mr. Kellermann, Circuit Clerk of Madison County, Illinois. The extension was attacked by defendant and defendant's motion to dismiss the appeal was denied. Then the old Illinois "merry-go-around" started up again (332 U. S. 570). The Appellate Court drawing a line of distinction where one never existed before as between transcript of the record and record on appeal and withdrew its extension in its opinion. That Court had its decision in Keel v. Ill. Term. R. Co., 346 Ill. App. 169, 104 N. E. 2d 659, called to its attention, but when you read its two opinions in this case and Keel there is nothing to indicate they are alike.

The plaintiff then petitioned the Illinois Supreme Court for leave to appeal, which was denied. We again assign error and say that plaintiff's rights under federal statute and the Federal Constitution to bring and maintain his action have been violated.

ARGUMENT FOR THE ALLOWANCE OF THE WRIT.

The important and compelling reason for the allowance of the writ is a conflict in the decisions of the United States Supreme Court. When a person is hired by a railroad his rights are governed by a contract entered into under the authority of Federal Law which supercedes State Law. Rwy. Employees Dept., A. F. L., v. Hanson, 351 U. S. 225, 100 L. ed. 1112, 76 S. Ct. 714. If that employee is wrongfully discharged by the railroad, and accepts his discharge as final, his right to sue for damages is governed by state law instead of federal law. T. W. A. v. Koppal, 345 U. S. 653, 97 L. ed. 1325, 73 S. Ct. 906.

The heart of the controversy concerns coexistence or exclusiveness of administrative remedy. In the Koppal case it is clear that the court used the term "administrative remedy" interchangeably with "contractual remedy."

The carmen's agreement, pleaded by plaintiff, is implemented by the Railway Labor Act, Title 45, U. S. C., Sec. 151 et seq., and the contract and statute should be read together. There is no statute, Federal or Illinois, that requires the exhaustion of administrative remedy. There is no statute that requires the exhaustion of contractual remedy. The doctrine exists by reason of the necessity to make a showing of exhaustion of such remedies in order to state a prima facie case for the enforcement of or challenge of an administrative decision. The doctrine first arose where legal proceedings follow after administrative proceedings, and the necessity was one of self protection for the courts. Otherwise, courts would be flooded with such matters before there was a final determination either within a union tribunal or within an administrative tribunal. The doctrine is akin to that which requires that a decision of a lower court be final and conclusive before it is appealable.

The remedies afforded by the Railway Labor Act are coexistent, but separate and distinct. If a railway employee that has been wrongfully discharged wants his job back, his exclusive remedy is to go before the Railroad Adjustment Board. Where such discharged employee accepts his discharge as final if he wants damages he must file his suit in a court of law.

"Where the construction of a written contract depends, not only upon the meaning of the words employed, but also upon extrinsic facts, * * * if the facts are controverted then the question as to what the contract was is a mixed one of law and fact, to be submitted to the jury." Carstens Packing Co. v. Sterne & Son Co., 286 Ill. 355, l. c. 357, 121 N. E. 737, l. c. 739; DuHamel v. Board of Education, 7 Ill. App. 2d 487, 130 N. E. 2d 10.

It is difficult, if not impossible, to determine from the order dismissing the complaint whether the lower court was applying the doctrine of primary exclusive jurisdiction or that of administrative finality. The fact that the order was negative in form made it affirmative in substance. When the lower court ruled upon the motion based upon the decision of the Railroad Adjustment Board, it was disregarding what this court had to say in Rochester Telephone Corp. v. U. S., 307 U. S. 125, 139, 83 L. Ed. 1147, 1157, 59 S. Ct. 754, 761.

The case of Keel v. Ill. Term. R. Co., 346 Ill. App. 169, 104 N. E. 2d 659, was decided by the Appellate Court of Illinois for the Fourth District, and all of its Judges at that time being the same Judges who dismissed the appeal in this case. Their decision was called to their attention in the brief to that court urging that it was not necessary to exhaust administrative remedies in Illinois in order for a wrongfully discharged railroad employee, to bring a suit for damages, where he accepts his discharge as final. It was also called to the attention of the Appellate

Court of Illinois that while the Federal Circuit Court of Appeals for the Seventh Circuit sitting in judgment over an Illinois contract may have gotten off on the wrong foot in Starke v. N. Y. C. & St. L. R. Co., 180 Fed. 2d 569, the same Court changed its position in a later case sitting in judgment on an Illinois contract in Bester v. Chicago, M., St. P. & P. R. Co., 195 Fed. 2d 73. Other decisions of the Federal Seventh Circuit Court of Appeals which support the proposition that it is not necessary to exhaust administrative remedies in order to bring an action for damages under the Railway Labor Act are: U. S. ex rel. DeLucia v. O'Donovan, 178 Fed. 2d 876, certiorari denied 340 U. S. 886, 95 L. ed. 643, 71 S. Ct. 207, and Lyons v. Illinois Greyhound Lines, 192 Fed. 2d 533. All of which was called to the attention of the Illinois Appellate Court.

There is no authority needed to support the statement that it is possible for a legislative act or an executive act to be in such irreconcilable conflict with the Constitution that it must be declared void. Some authorities contend that a decision of a court may not be challenged as being in conflict with the Constitution but it has been ruled long ago that a judicial decision is an action of the State. In City of St. Petersburg v. Alsup, 238 Fed. 2d 830, 832, the court said:

> "A state cannot, by judicial decision or otherwise, remove any of its activities from the inhibitions of the Fourteenth Amendment. See Nixon v. Condon, 286 U. S. 73, 88, 52 S. Ct. 484, 76 L. Ed. 984. * * * In Ex parte Virginia, 100 U. S. 339, 347, 25 L. Ed. 676:
>
> > 'Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is

> clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agent with power to annul or evade it.'
>
> * * *"

Not only did the Circuit Court err in the application of the Federal Law but the Illinois Appellate Court compounded error by dismissing the appeal. The Appellate Court ignored the fact that a ruling upon a motion by a trial judge is just as much a legal proceeding as if evidence had been taken. In the case of Keel v. Ill. Term. R. Co., 346 Ill. App. 169, 104 N. E. 2d 659, the same Appellate Court was passing on the correctness of a decision based upon a motion challenging the right to bring an action based upon a Federal Statute in a State Court.

Certainly it is elementary that due process includes equal protection of the laws and petitioner was not afforded the same treatment that was given to Keel.

Under the Tenth Amendment whatever powers are not delegated to the United States are reserved to the states respectively. The converse is likewise true, otherwise the words "nor prohibited by it to the States" would be meaningless. The Interstate Commerce clause is a power delegated to the United States. If any state has the right to regulate in the field of Interstate Commerce then only confusion can result.

Under the Seventh Amendment the right to a jury trial must be preserved in any court of the United States. If a United States Court has to accord a jury trial in a matter based upon a federal statute where the jurisdiction is by diversity of citizenship; then in a matter brought in a state Court of one of the United States based upon a federal statute the federal decisions ought to control.

Under Article 1, Section 10, the state is prohibited from passing any law impairing the obligation of contracts.

Can the State of Illinois passing a Civil Practice Act or promulgating rules of practice that would accomplish indirectly what it cannot do directly? In one case we believe the Erie doctrine was amplified to say "No." In Guaranty Trust Co. v. York, 326 U. S. 99, 89 L. Ed. 2079, ... S. Ct. ...., the Court said:

* * *

"It is therefore immaterial whether statutes of limitation are characterized either as 'substantive' or 'procedural' in State court opinions in any use of those terms unrelated to the specific issue before us. Erie R. Co. v. Tompkins was not an endeavor to formulate scientific legal terminology. It expressed a policy that touches vitally the proper distribution of judicial power between State and federal courts. In essence, the intent of that decision was to insure that, in all cases where a federal court is exercising jurisdiction solely because of the diversity of citizenship of the parties, the outcome of the litigation in the federal court should be substantially the same, so far as legal rules determine the outcome of a litigation, as it would be if tried in a State court. The nub of the policy that underlies Erie R. Co. v. Tompkins is that for the same transaction the accident of a suit by a non-resident litigant in a federal court instead of in a State court a block away should not lead to a substantially different result. And so, putting to one side abstractions regarding 'substance' and 'procedure,' we have held that in diversity cases the federal courts must follow the law of the State as to burden of proof, Cities Serv. Oil Co. v. Dunlap, 308 U. S. 208, 84 L. ed. 196, 60 S. Ct. 201, as to conflict of laws, Klaxon Co. v. Stentor Electric Mfg. Co., 313

U. S. 487, 85 L. ed. 1477, 61 S. Ct. 1020, as to contributory negligence, Palmer v. Hoffman, 318 U. S. 109, 117, 87 L. ed. 645, 651, 63 S. Ct. 477, 144 A. L. R. 719. And see Sampson v. Channell, 110 F. (2d) 754. Erie R. Co. v. Tompkins has been applied with an eye alert to essentials in avoiding disregard of State law in diversity cases in the federal courts. A policy so important to our federalism must be kept free from entanglements with analytical or terminological niceties. * * * "

If the federal courts must apply federal law to the interpretation of federal questions and if state courts must do likewise, then state procedural technicalities ought not be employed by state courts to duck the questions in issue. If the court does go wrong this Court has said it will not refrain from deciding the issue even if the state has not reached a decision on the point. We realize we are urging a landmark decision but one not without good authority to lead the way. In Propper v. Clark, 337 U. S. 472, 93 L. Ed. 1480, . . . S. Ct. . . . , the Court said:

" * * * *

"We have refused in a diversity of citizenship case to allow the difficulty of an issue of state law to deter us from exercising our jurisdiction when federal determination was subject to equitable discretion and the state issue was the only one in the case. Meredith v. Winter Haven, 320 U. S. 228, 88 L. ed. 9, 64 S. Ct. 7. To refrain from deciding it, we there said, would be to enervate diversity jurisdiction.

"Where a case involves a nonconstitutional federal issue, however, the necessity for deciding which depends upon the decision of an underlying issue of state law, the practice in federal courts has been, when necessary, to decide both issues. This was the course we followed in Markham v. Allen, 326 U. S. 490, 495,

406, 90 L. ed. 256, 260, 261, 66 S. Ct. 296, a case arising under the Trading with the Enemy Act, where an issue was the construction of a state statute. The state law question in Estate of Spiegel v. Commissioner, 335 U. S. 701, ante, 330, 69 S. Ct. 301, supra, was concededly difficult and unsettled; its decision admittedly controlled the existence of a federal question, since a finding that there was no possibility of reverter under Illinois law would have finally determined the issue on which the case was decided. And yet, although a method may have existed for obtaining an adjudication on the issue from the Illinois courts, 335 U. S. 632, 673, 674, ante, 288, 313, 314, 69 S. Ct. 322, 337, this Court followed the procedure which we adopt here of depending upon the determination of state law by the Court of Appeals. 335 U. S. 701, 707, 708, ante, 330, 337, 338, 69 S. Ct. 301. In so doing it followed the decision in Helvering v. Stuart, 317 U. S. 154, 161, et seq., 87 L. ed. 154, 159, 63 S. Ct. 140. Erie R. Co. v. Tompkins, 304 U. S. 64, 82 L. ed. 1188, 58 S. Ct. 817, 114 A. L. R. 1487, a common-law case, is itself a precedent against any general ruling that cases properly in the federal courts that depend upon state law should have that issue submitted to state courts for decision. See the later decision in the same case. Tompkins v. Erie R. Co. (C. C. A. 2d N. Y.), 98 F. 2d 49. * * * "

When a railroad employee is wrongfully discharged and his union refuses to prosecute his grievance with the officials of the railroad and the union refuses to prosecute his grievance with the Railroad Adjustment Board; then, so long as the Railroad Adjustment Board takes the attitude of discouraging an individual from prosecuting his own grievance, the door of the courts should be open to allow a suit for damages when the employee accepts his wrongful discharge as final. There is no better way of encouraging the Railroad Adjustment Board to take jurisdiction in

such cases or to discourage the railroads from wrongful action than to leave access to the courts open for a jury trial.

If there be no access to court for damages by a wrongfully discharged railroad employee because of state statute or decision having the force of law; where that same employee is forced under his contract to join a union under a contract between a craft and a carrier having sanction of federal law there is a lack of due process and unequal treatment.

Congress has not seen fit to withdraw from the wrongfully discharged employee the right to go into Court for damages. We fail to see where a state by act or decision has the right to make such withdrawal.

We have reached an age where a man has been able to break the sound barrier by travelling at speeds far in excess of those travelled by sound waves. While such was not anticipated when the last two cases cited were decided, they open the door of opportunity for this Court in this case to re-examine the Interstate Commerce clause. We urge that a re-examination of that clause is vital to our present day progress and that this case furnishes the ideal state of facts by which this Court may decide not to allow a drift too far down the Erie road (Erie v. Tompkins), especially in state decisions concerning Federal rights.

Respectfully submitted,

ZENO MIDDLETON,
Attorney for Petitioner.

APPENDIX.

1. Constitutional provisions involved in this case.

2. Excerpt from Transcontinental & Western Air, Inc., v. Koppal, 345 U. S. 653, 97 L. ed. 1325, 73 S. Ct. 906.

3. Excerpt from Rwy. Employees Dept. A. F. L. v. Hanson, 351 U. S. 225, 100 L. ed. 1112, 76 S. Ct 714.

CONSTITUTION OF THE UNITED STATES.

XIV. Amendment.

§ 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

X. Amendment.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

VII. Amendment.

In suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

CONSTITUTION OF ILLINOIS.

ARTICLE III.

Distribution of Powers.

Departments of government

The powers of the government of this state are divided into three distinct departments—the legislative, executive and judicial; and no person, or collection of persons, being one of these departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted.

ARTICLE II.

Bill of Rights.

§ 2. Due process

No person shall be deprived of life, liberty or property, without due process of law.

§ 5. Trial by jury

The right of trial by jury as heretofore enjoyed, shall remain inviolate; but the trial of civil cases before justices of the peace, by a jury of less than twelve men, may be authorized by law.

CONSTITUTION OF THE UNITED STATES.

ARTICLE I.

"§ 10. No state shall * * *; pass any bill of attainder, ex post facto law or law impairing the obligation of contracts; * * *."

Transcontinental & Western Air, Inc., v. Koppal, 345 U. S. 653, 97 L. ed. 1325, 73 S. Ct. 906.

"* * * On the other hand, if the applicable local law, as in Missouri, requires an employee to exhaust his administrative remedies under his employment contract in order to sustain his cause of action, he must show that he has done so. Here respondent was employed by a carrier, subject to Title II of the Railway Labor Act, and his employment contract contained many administrative steps for his relief, all of which were consistent with that Act. Accordingly, while he was free to resort to the courts for relief, he was there required by the law of Missouri to show that he had exhausted the very administrative procedure contemplated by the Railway Labor Act. In the instant case, he was not able to do and his complaint was properly dismissed. * * *."

Railway Employes' Dept., A. F. L., v. Hanson, 351 U. S. 225, 100 L. ed. 1112, 76 S. Ct. 714.

"* * * If private rights are being invaded, it is by force of an agreement made pursuant to federal law which expressly declares that state law is superseded. Cf. Smith v. Allwright, 321 U. S. 649, 663, 88 L. ed. 987, 996, 64 S. Ct. 757, 151 A. L. R. 1110. In other words, the federal statute is the source of the power and authority by which any private rights are lost or sacrificed. Cf. Steele v. Louisville & N. R. Co., 323 U. S. 192, 198, 199, 204, 89 L. ed. 173, 180, 181, 184, 65 S. Ct. 226; Public Utilities Com. v. Pollak, 343 U. S. 451, 462, 96 L. ed. 1068, 1077, 72 S. Ct. 813. * * *."